

**REMARKS**

Claims 21-43 are pending. Claims 21-25, 28 and 31 were rejected under §102(e). Claims 26, 27, 29, 30 and 32- 43 were rejected under 35 U.S.C. 103(a). Claim 40 was also rejected under §112. Claims 21, 32, 36 and 40 have been amended.

**March 31, 2004 In Person Interview**

Applicant would like to thank Examiner Kapadia and his supervisor Examiner Thomas for participating in the March 31<sup>st</sup> interview. During the interview Applicant's counsel and Examiners Kapadia and Thomas discussed the Applicant's disclosure, an embodying prototype and the primary reference (Brown U.S. Patent No. 6,161,095). Applicant believes that the interview resulted in an agreement between Applicant and the Examiners regarding claim terminology that clearly distinguish Brown from Applicant's claimed invention. Specifically, language emphasizing the generation of a record of the unforeseen self administration of a medical treatment clearly distinguishes over Brown, which can only generate records of treatments consistent with a pre-programmed medical regimen. Applicant has amended the currently pending claims to reflect this distinction.

**Claim Rejections 35 U.S.C. §112**

Claim 40 was rejected as indefinite under 35 U.S.C. §112, because the claim term "personal communication device" lacked antecedent basis. As noted by the Examiner, the antecedent basis for this term was "communication device." Accordingly, claim 40 has been amended to recite "communication device" rather than "personal communication device." Applicant, therefore, respectfully requests that this rejection be withdrawn.

**Claim Rejections 35 U.S.C. §102**

Claims 21-25, 28 and 31 were rejected as anticipated under 35 U.S.C. §102(e) by Brown (U.S. Patent No. 6,161,095). Applicant has amended the pending claims to in accordance with the distinctions identified during the Examiner interview discussed above.

Specifically, all of the claims, as amended, require a record of the “patient’s unforeseen self administration of a medical treatment.” In contrast, the system disclosed in Brown cannot create a record of the “patient’s unforeseen self administration of a medical treatment.” Brown discloses a system that only creates records indicating the performance of a pre-prescribed, scheduled, medical treatment. Brown, therefore, acts like an alarm clock that is pre-programmed with a treatment regimen. It notifies the patient when an item in the regimen must be performed and records the patient’s compliance with the identified item. Accordingly, Brown cannot record unforeseen medical treatment events that occur at arbitrary times, such as, for example, in response to a medical symptom. Accordingly, Applicant respectfully submits that claims 21-25, 28 and 31, as presently amended, overcome Brown.

**Claim Rejections 35 U.S.C. §103**

Claims 26, 27, 29, 30 and 32- 43 were rejected as obvious under 35 U.S.C. §103(a) over Brown (U.S. Patent No. 6,161,095) in view of various other references. As discussed above, Applicant has amended the pending claims to clarify the characteristics that distinguish the present invention over Brown.

For the same reasons discussed above with respect to anticipation, Applicant believes that the amended claims clearly articulate the distinction between the present invention and compliance monitoring systems, such as those disclosed in Brown. As discussed above, Brown does not teach the recordation of an unforeseen medical treatment. Brown only teaches

recording of medical treatments in accordance with a pre-programmed regimen. All of the pending claims require a record of the "patient's unforeseen self administration of a medical treatment." Thus, Applicant respectfully submits that the obviousness rejections with respect to these claims should be withdrawn.

Applicant does not address the Examiner's representations with respect to the other cited prior art because Brown was relied on as the basis for all of the pending rejections. Distinguishing over Brown, therefore, addresses all of the pending rejections.

### **CONCLUSION**

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims and allowance of this application.

### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees, which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 4297-4017. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 4297-4017. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: May 4, 2004

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